

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF NEWPORT)	
)	
V.)	
)	
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)	
AND)	
KENTON COUNTY WATER DISTRICT NO. 1)	
)	
and)	CASE NO. 89-014
)	
CHARLES ATKINS AND)	
STEVEN J. FRANZEN)	
)	
V.)	
)	
CAMPBELL COUNTY KENTUCKY WATER DISTRICT)	

O R D E R

On January 19, 1989, the City of Newport ("Newport") filed a formal complaint with this Commission pursuant to KRS 278.260 naming Campbell County Kentucky Water District ("Campbell District") and Kenton County Water District No. 1 ("Kenton District") as defendants. Both water districts are jurisdictional utilities; Newport operates a municipal water utility and is not under the Commission's jurisdiction. On January 24, 1989, two customers of Campbell District, Charles Atkins and Steven J. Franzen ("Atkins/Franzen"), filed a formal complaint naming Campbell District as a defendant.

The Commission, by Order dated February 6, 1989 and pursuant to CR 42, consolidated these actions because there were questions

of law and fact common to both complaints. Campbell District subsequently filed motions to dismiss both complaints and, in the alternative, a motion to separate the complaints. Kenton District has also filed a motion to dismiss the Newport complaint and a motion to separate. Newport has filed responses to all motions filed by the defendants. Atkins/Franzen have responded to the motion to dismiss filed by Campbell District. In turn the defendants have replied to all responses filed by the complainants.

The Commission having reviewed the pleadings in this case and being otherwise sufficiently advised, is of the opinion and finds that the motions of Campbell and Kenton Districts requesting dismissal of both complaints should be denied for the reasons and grounds set forth below.

In their respective motions to dismiss the Newport complaint, Campbell District and Kenton District both argue that Newport lacks standing to maintain this action because it is not a jurisdictional utility and because it is not a customer of either district. Newport argues in its response that the language of KRS 278.260 is sufficiently broad to confer standing on "any person" regarding rates and services of a jurisdictional utility.

KRS 278.260(1) provides that:

The commission shall have original jurisdiction over complaints as to rates and service of any utility, and upon a complaint in writing made against any utility by any person that any rate . . . or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable . . . or unjustly discriminatory . . . the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. (emphasis added).

While KRS 278.260 provides that any person may bring a complaint, KRS 278.010 defines person to include quasi-public and public corporations. The right to bring a complaint is granted by statute and in this instance, the language of the statute is sufficiently broad to confer standing on Newport as a public corporation.

Since the language of KRS 278.260 evidences a clear intent by the legislature to allow any person to complain of a utility's actions and the language is sufficiently broad to confer standing on Newport in this instance, the Commission has not considered the question of whether Newport has Article III "case or controversy" standing to maintain this action.

Campbell District further argues that as a matter of law, it was entitled to negotiate and execute a contract with Kenton District for water at \$.58/100 cu.ft. pursuant to an Order of the Commission in Case No. 9846.¹ However, in Case No. 9846 Kenton District was authorized to charge that rate to Campbell District as one of 5 wholesale customers. Since Campbell District at the time that order was entered, was purchasing the bulk of its water from Newport, the Commission had no opportunity to determine the impact on either district of using Kenton District as the sole supplier for Campbell District. The Commission's authority to regulate both districts as jurisdictional utilities, and to act

¹ Case No. 9846, Application of Kenton County Water District No. 1 to (a) Issue Revenue Bonds in the Approximate Amount of \$21,930,000; (b) to Construct Additional Plant Facilities of Approximately \$19,214,000; and (c) Notice of Adjustment of Rates Effective May 1, 1987.

consistent with the public interest, mandate further inquiry into the acts complained of by both districts and therefore, the argument above must fail.

The Commission further denies Campbell and Kenton District's respective motions to separate the complaints. The acts giving rise to each complaint are the same. Development of the facts and issues presented by each complaint will require participation of virtually the same parties. Consolidation of both complaints is the most economical and expedient method for resolution for both the Commission and the parties and the Commission sees no benefit to be derived from granting these motions.

By Order dated March 31, 1989 the Commission granted a portion of Newport's Motion for Immediate Investigation and Order to Cease, and directed both Campbell and Kenton District to inform the Commission of any construction or planned construction which related to execution of the water supply contract in question. The Commission is undertaking the investigation requested by Newport and is still receiving and considering information from various sources regarding impending projects from both districts. Since the Commission's investigation is pending and both districts are cooperating in this investigation, the Commission hereby denies the portion of Newport's motion requesting an Order to cease.

IT IS HEREBY ORDERED that:

1. The motions of Campbell and Kenton Districts to dismiss the complaints and in the alternative, to separate the complaints and the motion of Newport for an order to cease are hereby denied.

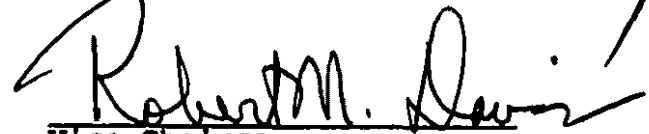
2. Defendants Campbell District and Kenton District shall file their respective answers to the complaints of Newport and Atkins/Franzen within 10 days of receipt of this Order.

3. Due to the substantial public interest question presented, an informal conference shall be held at the Commission offices in Frankfort, Kentucky on June 19, 1989 at 10:00 a.m. for the purpose of establishing a procedural schedule.

Done at Frankfort, Kentucky, this 31st day of May, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director